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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES RICHARD BANFILL,

Defendant and Appellant.

E048244

(Super.Ct.No. RIF135428)

OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster,
Judge. Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant, James Richard Banfill, pled guilty to one count of corporal injury to a
spouse (Pen. Code, § 273.5, subd. (a)), as well as one count of criminal threats (Pen.
Code, § 422), and admitted one prison prior (Pen. Code, § 667.5, subd. (b)), pursuant to a
plea agreement that provided for a stipulated sentence of four years in prison. He appeals

from an order entered after the plea setting restitution to the victim in the amount of \$1,710, plus any additional victim restitution as determined by the county's Financial Services department.

BACKGROUND

The victim is the ex-girlfriend of defendant. On February 21, 2007, the victim and defendant were staying in a room at a motel in Corona. The victim arrived at the motel at approximately 8:20 p.m. that date, after having a drink at a cocktail lounge. When she came in, she went into the bathroom; she and Jimmy had some verbal exchanges that escalated into an argument while she was in the bathroom. The defendant dragged her out of the bathroom by the hair and shirt as she got up from the toilet. The two struggled, pushing and pulling; the victim defended herself by kicking him when he kicked her on the ground.

During the fight, the victim's adult son called her cell phone number twice. The first time, defendant hung up, and the second time he handed the phone to the victim. While the victim spoke to her son on the phone, defendant taunted her. The victim told her son to call his twin brother and tell the brother where she was located. Defendant was angry with her, tormenting her and standing over her at this time. The victim threw the phone at defendant. At one point defendant head butted the victim. He also threw the victim on the floor, kicked her and stuffed a towel in her mouth. He told her that she better shut up or her family would find her mouth full of rocks.

The victim fought back by throwing things at the defendant including a glass candle holder or vase. The glass object missed the defendant and broke when it struck

something behind him. The victim picked up a piece of the broken glass but defendant grabbed it away from her. He came towards her, trying to strike her with the glass. Defendant tried to swing in the direction of her face or head with the glass in his hand, the victim tried to block with her hand. The glass shard stuck in her hand. The victim pulled the glass out of her hand and it bled heavily, so she wrapped a tee shirt around her hand. When she removed the shirt to see her hand, it spurting blood, so she used the towel defendant used to shove in her mouth to staunch the bleeding. The injury to her hand required eight stitches, left a large scar, and caused the partial loss of use of her hand.

Defendant was ultimately charged with corporal injury to a spouse (Pen. Code, § 273.5, subd. (a), count 1), criminal threats (Pen. Code, § 422), and mayhem. (Pen. Code, § 203, count 3.) It was further alleged that he had previously been convicted of a felony for which he had served a prison term (prison prior). (Pen. Code, § 667.5, subd. (b).) After numerous continuances, the defendant pled guilty to counts 1 and 2 on the day of trial, and admitted the prison prior, in return for a stipulated sentence of four years in prison. At the sentencing hearing, the court imposed the middle term of three years for count 1, imposed a concurrent term of two years for count 2, and an enhancement of one year for the prison prior. The court set a hearing to determine the amount of restitution to the victim.

On April 16, 2009, the court ordered defendant to pay \$1,710 as restitution to the victim, plus any additional restitution as determined by the county's Financial Services department. Defendant timely appealed, challenging the sentence or other matter occurring after the plea.

DISCUSSION

At his request, this court appointed counsel to represent defendant on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case, and a summary of the facts, and requesting that we undertake an independent review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

The restitution order was made after a hearing at which the court considered documentation presented by the prosecution. Although defense counsel objected to the documentation on the ground of hearsay and argued that the information was unreliable, no other evidence was presented. The record shows the victim suffered a severe injury to her hand and was traumatized by the incident that led to the injury, as evidenced by the transcript of the preliminary hearing at which she was very stressed and emotional. There is substantial evidence to support the court's restitution award.

We have completed our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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s/Gaut
J.

We concur:

s/Ramirez
P. J.

s/King
J.